

In the Matter of Merchant Mariner's Document No. Bk-91826-D1 and all other Seaman Documents

Issued to: LINCOLN AHRENS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1254

LINCOLN AHRENS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 14 September 1960, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The five specifications found proved allege that while serving as a wiper on the United States SS MARGARET LYKES under authority of the document above described, between 29 February and 6 April 1960, Appellant failed to perform any duties on three dates, he failed to obey a lawful order, and he failed to join the ship at a foreign port.

Appellant was ordered to appear at a hearing on 8 June 1960 but he requested the Investigating Officer to change the date because Appellant had to leave town. It was verbally agreed to postpone the hearing until 8 or 11 July. On 6 July, the Investigating Officer received a letter from Appellant stating that, due to the death of his mother, he would be unable to appear at the scheduled time. Appellant stated that he would keep the Coast Guard informed of his whereabouts so as to set a later date for the hearing. There was no return address given. When nothing was heard from Appellant by 15 August, the Investigating Officer sent a letter to him at his sister's address in Galveston as it appeared on the Shipping Articles. This was returned with the notation that Appellant had moved and left no address. Consequently, the hearing as convened on 26 August and the Investigating Officer informed the Examiner of the reasons for the delays since 8 June before making a motion to proceed in absentia. The motion was granted by the Examiner and pleas of not guilty were entered to the charge and specifications on behalf of Appellant.

The Investigating Officer then introduced in evidence the Shipping Articles and entries in the Logbook for the voyage in question in support of the specifications. Except for two additional specifications which the Examiner concluded were not proved because the log entries were made seven and eight days after the dates of the alleged offenses, the logbook entries adequately support the allegations and show that Appellant had been demoted from Second Assistant Engineer to a wiper on 1 March for his continued neglect of duties on the ship. On the basis of this evidence, the Examiner revoked all licenses and documents which had been issued to Appellant.

Service of this decision of 14 September was not effected until Appellant appeared at the

Examiner's office in New Orleans on 30 December.

Appellant has no prior record with the Coast Guard.

On appeal, counsel urges that Appellant was not served with notice of the hearing; Appellant was punished sufficiently by being reduced in pay and status from Second Assistant Engineer to a wiper.

APPEARANCE ON APPEAL: George Smill, Esquire, of New Orleans,
Louisiana, of counsel.

OPINION

At the time of the service of the charge and specifications, Appellant was told that the hearing would proceed in his absence if he did not appear as directed. Nevertheless, after the commencement of the hearing was postponed twice at Appellant's request, he failed to contact the Coast Guard as promised in his letter of 6 July. Apparently nothing more was heard from Appellant for more than five months until he was given the Examiner's decision on 30 December. Under these circumstances, it is my opinion that Appellant received adequate notice that the hearing would not be delayed indefinitely awaiting word from him. Elgin, Joliet and Eastern Railway Co. V. Burley (1946), 327 U.S. 661, states, at page 666, that "due notice" of hearings requires at least knowledge of the pendency of the proceedings or knowledge of such facts as would be sufficient to put the party on notice of their pendency. It would have served no purpose to have convened the hearing on 8 June, or 8 or 11 July, while Appellant was out of town. The burden was then on Appellant to take affirmative steps to determine the status of the pending case within a reasonable length of time. There was no way to contact him. After waiting more than another month, it was proper to proceed with the hearing although Appellant did not have notice of the specific date on which it conducted. Even on appeal, there is no explanation for Appellant's protracted failure to get in touch with the Coast Guard.

In addition to the above and the fact that these postponements were not requested for the benefit of the Government, there is no claim or indication that Appellant has a good defense to any of the alleged offenses. The fact that Appellant was demoted during the course of the voyage does not preclude remedial action against his licenses and documents. However, considering Appellant's prior clear record, the order of revocation will be reduced to a suspension for six months.

The specification alleging the failure to obey a lawful order on 7 March 1960 is dismissed because the Examiner's only finding relative to this date states that Appellant failed to turn to. This finding is supported by the logbook entry but the offense alleged is entirely different.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 14 September 1960, is

modified to provide for a suspension of six (6) months.

As so MODIFIED, the order is AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 21st day of July 1961.